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884. Where, however, strangers to the privileged occasion are present by the invitation or design of the defendant, the privilege is lost. *Fresh v. Cutter*, 73 Md. 87; *Dale v. Harris*, 109 Mass. 193. As this does not appear to have been the situation in the principal case, the decision is undoubtedly sound.

MARRIAGE.—BREACH OF PROMISE.—The action was brought to recover damages for a breach of promise to marry. After suit was commenced defendant died and the action was continued against the executor. As special damages plaintiff alleged and proved that she gave up her millinery business upon defendant's request and promise of marriage and support. *Held*, that action did not survive death of defendant. *Quirk v. Thomas*, [1915] 1 K. B. 798.

As a general rule a right of action for breach of contract survives death and is enforceable against the personal representative. *Hambly v. Trott*, 1 Cowp. 371. A breach of promise of marriage is an exception to this rule, because a breach of such a contract does not affect the estate of the parties but is essentially an injury to the feelings and sentiment. *Wade v. Kalbfleisch*, 58 N. Y. 282, *Grubb's Admr. v. Sult*, 32 Gratt. 203. There have, however, been numerous dicta holding that such an action could be maintained against a personal representative if special damage was alleged and pleaded. *Stebbins v. Palmer*, 1 Pick. 71; *Chase v. Fitz*, 132 Mass. 359; *Hovey v. Page*, 55 Me. 142; *Lattimore v. Simmons*, 13 Serg. & R. 183; *Finlay v. Chirney*, 20 Q. B. D. 484. In *Finlay v. Chirney*, LORD ESHER said that the damage to be considered must be damage affecting property and that if the plaintiff had agreed to give up a better place or employment and did give it up, it might be special damage. The court in the instant case considered the question still open and did not feel bound by anything said in the above cases as to whether or not proof of special damage would make a breach of promise maintainable against a personal representative; and it came to the conclusion that allegation and proof of special damage did not prevent the cause of action for breach of promise from dying with the promisor. "Now, inasmuch as there is no obligation affecting property on either side in a contract of marriage, I fail to see how the fact that one of the parties suffered pecuniary loss from the breach of the contract can impose a liability on the executor of the party who broke the contract."

MALICIOUS PROSECUTION.—LIABILITY FOR MALFEASANCE OF OFFICER.—Plaintiff, at the instigation of the defendant, was arrested wrongfully under a writ which commanded that he be brought before a justice of the peace. Instead, however, he was imprisoned for a period of about three days. *Held*, that even though such action under this writ was unlawful and unauthorized, plaintiff's imprisonment was a proper element of damage, since a person who sets on foot a malicious prosecution is liable for its continuance, and for the malfeasance of the officer making the arrest. *Lyons v. Davy-Pocahontas Coal Co.*, (W. Va. 1915), 84 S. E. 744.

The cases in America involving this question are far from being a unit upon the proposition as to how far the liability of one who starts a malicious